
IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Julia M. Ingalls, Plaintiff and Appellant

v.

Glass Unlimited, Inc., a corporation, Defendant

and

the Municipal Airport Authority of the City of Fargo, a municipal corporation, Defendant and Appellee

Civil No. 940369

Appeal from the District Court for Cass County, East Central Judicial District, the Honorable Michael O. McGuire, Judge.

DISMISSED.

Opinion of the Court by Sandstrom, Justice.

Leland F. Hagen of Lee Hagen Law Office, P.O. Box 3143, Fargo, N.D. 58108, for plaintiff and appellant.

E. Thomas Conmy III and Andrew L.B. Noah of Nilles, Hansen & Davies, P.O. Box 2626, Fargo, N.D. 58108, for defendant and appellee; argued by E. Thomas Conmy III.

Ingalls v. Glass Unlimited, Inc., et al.

Civil No. 940369

Sandstrom, Justice.

Julia M. Ingalls appeals a judgment dismissing one of the defendants in her action. We hold the district court improvidently granted Rule 54(b), N.D.R.Civ.P., certification and dismiss the appeal.

On July 4, 1991, Julia M. Ingalls was injured at the Hector International Airport in Fargo. Ingalls contends an automatic door closed on her causing her to fall. Ingalls sued Glass Unlimited, Inc., the company responsible for installing and maintaining the automatic doors. Glass Unlimited was properly served and does not appeal.

The Municipal Airport Authority of Fargo is a public corporation which operates Hector Airport. On June 29, 1994, Ingalls personally served a summons and complaint on the executive director of the Airport Authority. The executive director notified the Airport Authority governing board at a board meeting on July 5, 1994. The board unanimously adopted a motion to receive the summons and complaint and to refer them to the Airport Authority's attorney.

The Airport Authority moved to dismiss the action under Rule 12, N.D.R.Civ.P., based on insufficiency of

service and lack of personal jurisdiction. The Airport Authority argued Ingalls failed to serve the governing board as required under Rule 4(d)(2)(E), N.D.R.Civ.P. Ingalls concedes the executive director is not a board member, but argues the Airport Authority admitted service at the July 5, 1994, board meeting. The district court dismissed the action against the Airport Authority and ruled there was no just reason to delay a final judgment under Rule 54(b), N.D.R.Civ.P.

[529 N.W.2d 873]

Ingalls appeals the judgment dismissing the Airport Authority.

This case closely parallels Gessner v. City of Minot, (Civil No. 940365, Filed 3/16/95) ___ N.W.2d ___ (N.D. 1995). Here too, further developments at trial may make this appeal moot.

Based on our reasoning in Gessner and Bulman v. Hulstrand Constr. Co. Inc., 503 N.W.2d 240 (N.D. 1993), we conclude the district court abused its discretion by granting Rule 54(b) certification. Accordingly, we dismiss the appeal.

Dale V. Sandstrom
William A. Neumann
Beryl J. Levine
Herbert L. Meschke
Gerald W. VandeWalle, C.J.